IN THE

# Supreme Court of the United States

October Term, 1975

No. 75-906

THOMAS J. WALSH, JR., d/b/a TOM WALSH & CO.,
*Petitioner,*
v.
E. A. SCHLECHT, et al.,
as Trustee of Five Oregon-Washington Carpenters-Employers Trust Funds,
*Respondents.*

# BRIEF OF *AMICUS CURIAE*
## MECHANICAL CONTRACTOR ASSOCIATIONS OF WASHINGTON

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## BRIEF OF *AMICUS CURIAE* MECHANICAL CONTRACTOR ASSOCIATIONS OF WASHINGTON

### I. THE INTEREST OF AMICUS

*Amicus Curiae*, Mechanical Contractor Associations of Washington (hereinafter referred to as "MCA") is a Washington non-profit organization. Its membership is comprised of substantially all unionized mechanical contractors located in Washington and parts of Oregon and Idaho, i.e., its members employ members of various plumbing and pipefitting local unions. One of its primary functions is that of multi-employer collective bargaining on behalf of

its members. It enters into labor-management agreements with various plumbing and pipefitting local unions existing in the geographic areas involved. Part and parcel of the collective bargaining process and the agreements which result are certain, jointly-administered employee benefit trusts of the type being considered by this honorable court; these trusts are commonly referred to in the industry as "302 trusts".

The specific interest of MCA is a practice in the construction industry pertaining to "302 trusts" which exists virtually throughout the country. Specifically, a construction employer association such as MCA and a labor union negotiate a labor agreement. As a part of the negotiations, they create and from time to time agree to alter, modify or amend, a written, jointly-administered employee-benefit trust agreement. The employer association selects trustees and the union selects a like number to administer the trusts. The problem comes in acceptance by the trustees of funds contributed by employers who are not members of the employer association nor represented by the employer association. It is MCA's position that that practice violates both requirements of §302(c)(5)(B) of the Labor-Management Relations Act of 1947, 29 USCA §186 which state:

> "The detailed basis on which such payments are to be made is specified in a written agreement with the employer and employees and employers are equally represented in the administration of such fund . . ."

The unions traditionally attempt to satisfy this requirement by entering an agreement with the non-member employer whereby that non-member agrees with the union to be bound by the terms of the employer association-



union agreement which agreement provides, *inter alia*, for the making of trust contributions.

In recent years the advent of what is called a National Construction Agreement has grossly perpetuated this practice. Under the terms of such an agreement a large national contractor will enter an agreement with an international union for a given craft. The gist of the agreement is that the national contractor agrees to be bound by the terms of the collective bargaining agreement which is in effect in the geographic area where he might be performing a construction project. When he enters a given area the local union will then have the national contractor sign a compliance agreement.

If this precise issue was before the court for consideration, we would frame the issue as follows:

Where a multi-employer bargaining association enters a labor-management agreement on behalf of its members with a union which includes provisions for a jointly administered employee benefit trust, may a non-member of that association lawfully make contributions to that trust without the consent of the association?

## II. SUMMARY OF PERTINENT FACTS AS REVIEWED BY THIS AMICUS

The parties to the subject trusts are the Oregon-Columbia Chapter of the Associated General Contractors of America, et al., and certain local unions of the United Brotherhood of Carpenters and Joiners of America. Petitioner Walsh is not a member of AGC nor is it represented by them for collective bargaining purposes. It is signatory to a 1969 memorandum agreement (Ex. 1) which requires

compliance with the applicable collective bargaining agreement and the subject trusts (Ex. 4), but it is not a party to them. The management trustees on the subject trusts are selected by AGC and as a non-member Walsh has no voice in their selection.

On the basis of these facts and for the reasons discussed below, Amicus urges the court to rule that any payment made by Walsh to the subject trusts would be unlawful and therefore cannot be compelled.

## III. THE HISTORY AND NATURE OF §302

Congress included in the Labor-Management Relations Act of 1947 broad prohibitions against payments by employers to representatives of their employees. Section 302(a) of the Act provides, in relevant part,

> It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultants to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other things of value—
>
> (1) to any representative of any of his employees who are employed in an industry affecting commerce; or
>
> (2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

29 U.S.C. § 186(a).

The blanket proscription upon payments has been considered on several occasions by the Supreme Court. In *Arroyo v. United States*, 359 U.S. 419, 3 L.Ed.2d 915, 79 S. Ct. 864 (1959), for example, the following discussion is found:



> The examination of the legislative history confirms that a literal construction of this statute does no violence to common sense. When Congress enacted § 302 its purpose was not to assist the States in punishing criminal conduct traditionally within their jurisdiction, but to deal with problems peculiar to collective bargaining. The provision was enacted as part of a comprehensive revision of federal labor policy in the light of experience acquired during the years following passage of the Wagner Act, and was aimed at practices which Congress considered inimical to the integrity of the collective bargaining process.
>
> Throughout debates in the Seventy-ninth and Eightieth Congresses there was not the slightest indication that § 302 was intended to duplicate state criminal laws. *Those members of Congress who supported the amendment were concerned with corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control. Congressional attention was focussed particularly upon the latter problem* because of the demand which had then recently been made by a large international union for the establishment of a welfare fund to be financed by employer's contributions and administered exclusively by union officers. See United States v. Ryan, 350 U.S. 299, 100 L.ed. 335, 76 S.Ct. 400.
>
> Congress believed that if welfare funds were established which did not define with specificity the benefits payable thereunder, a substantial danger existed that such funds might be employed to perpetuate control of union officers, for political purposes, or even for personal gain. See 92 Cong.Rec. 4892-4894, 4899, 5181, 5345-5346; S.Rep. No. 105, 80th Cong. 1st Sess., at 52; 93 Cong.Rec. 4678, 4746-4747. To remove these dangers, *specific standards were established to assure that welfare funds would be established only for purposes which Congress considered proper and expended only for the purposes for which they were*

*established*. See Cox, Some Aspects of the Labor Management Relations Act, 1947, 61 Harv.L.Rev. 274, 290. Continuing compliance with these standards in the administration of welfare funds was made explicitly enforceable in federal district courts by civil proceedings under § 302(e).

3 L.Ed.2d at 919-920 (Emphasis supplied, footnotes omitted.

Congress provided limited exceptions to the reach of § 302(a) in § 302(c) of the Act. That section provides:

> The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical and hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) *the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund,* together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in the event of their failure to agree within a reasonable



> length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or other benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of this subsection shall apply to such trust funds; . . . .

29 U.S.C. § 186(c) (Emphasis supplied).

A violation of the quoted provision is a crime (29 U.S.C. § 186(d)). The purpose of the statute is to curb abuses, both actual and potential, The legislative history of this section makes clear that Congress believed that absent a *limited* exception for such funds and absent specific guidelines for their administration, a substantial danger existed that such funds might be employed to perpetrate control of union officers, for political purposes, or even for personal gain. As such, the specific section under consideration here is strictly and narrowly construed. *U.S. v. Ryan,* 350 U.S. 299, 76 S.Ct. 400, 100 L.Ed. 335; *Local No. 2 v. Paramount Plastering,* 310 F.2d 178 (9th Cir. 1962); *Mech. Const. Assn. of Philadelphia v. Local Union 420,* 265 F.2d 607 (3d. Cir. 1959).

In *Independent Assn. of Mutual Emp. v. New York Racing Assn.*, 398 F.2d 587 (2d Cir., 1968), the court noted that:

> The purpose of Section 302 is to prevent union and union officials from demanding that employers contribute to "welfare funds" under the control of the union which the union's officials could use as they saw fit. Arroyo v. United States, 359 U.S. 419, 425-426, 79 S.Ct. 864, 3 L.Ed.2d 915 (1959); United States v. Ryan, 225 F.2d 417 at 423-424, 425-426; 350 U.S. at 304-306, 76 S.Ct. 400. What Congress wished to accomplish by enacting Section 302 was to give the employer an equal voice with the union in the administration of union-established welfare funds.

398 F.2d at 591.

## IV. LACK OF EQUAL REPRESENTATION

It is the position of this Amicus that the acceptance of contributions by the trustees form non-association members such as Walsh violates that portion of 29 U.S.C. § 186(c)(5)(B) which states, "Provided: . . . employees and employers are equally represented in the administration of such fund."

Non-AGC member contributors have no voice in the selection of trustees, in determining the terms and conditions of the trust agreement, or in the collective bargaining agreement which creates it. The management trustees are all appointed by AGC. Walsh not being an AGC member and having no voice in their selection cannot be said to be represented by them. Walsh is liable for contributions to these supposedly jointly administered trusts only because of an agreement he made with the unions. Thus, Walsh is not represented by anyone other than the labor trustees. Walsh's contributions are being made to representatives



of its employees, i.e., labor trustees, and the trust is being administered in violation of law.

A very recent case involving this same representation issue is *Mobile Mechanical Contractors Assn. v. Carlough*, 382 F. Supp. 1134 (1974). In that case, the union struck because of the multi-employer bargaining unit's refusal to agree to pay money to the National Stabilization Agreement of the Sheet Metal Industry Trust Fund (SASMI). The issue raised was whether SASMI was properly established, administered and maintained under the requirements of 29 U.S.C. § 186. The court found:

> The evidence is overwhelming that SASMI does not comply with the requirements of Section 302 that "employers and employees . . . [be] equally represented in the administration of such fund."
>
> It is abundantly clear from the Agreement and Declaration of Trust Establishing The National Stabilization Agreement Of Sheet Metal Industry Trust Fund (1973 Trust Agreement) and the testimony of defendants' expert witness that the General President of the Sheet Metal Workers International Association (International Association), a position now occupied by Defendant Carlough, has the continuing unfettered right to remove and replace any or all union trustees and that no employer has any right to participate in removal or replacement or as a matter of practice the appointment of employer trustees. It is uncontroverted that Mechanical Contractors has neither the right to select nor to remove nor to replace nor the right to participate in the selection, removal or replacement of any employer trustee.
>
> . . .
>
> Thus, no employer, except employers who participated in the initial establishment of SASMI, may participate in the selection of any employer trustee; by

contract, the International Association retains such a right to remove and select union trustees from time to time.

. . .

This court views with some surprise the fact that SASMI has been established, administered, and maintained with so little regard for the purposes of Section 302. As the Supreme Court emphasized in United States v. Arroyo, 359 U.S. 419, 79 S.Ct. 864, 3 L.ed.2d 915 (1959),

> Those members of Congress who supported the amendment were concerned with the corruption of collective bargaining through bribery of employee representatives by employers, with extortion by employee representatives, and with the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control. Congressional attention was focussed particularly upon the latter problem . . . (foot-notes omitted) 359 U.S. at 425-426, 79 S.Ct. at 868.
>
> The disproportionate representation on the part of the International Association as compared to that of the employers in general and Mechanical Contractors in particular raises a very real possibility of union domination of SASMI by the International Association.

382 F.Supp. at 1136-1137.

This record is void of how disproportionate the representation is but that makes no difference. The fact remains that Walsh has no voice in selection of the employer trustee; that function is carried out by AGC and its membership and as a non-member Walsh does not participate in that process. Therefore, the employers and employees are not equally represented in the trust's administration.

To analogize, lets say that two employers and a union formed a trust. The two employers were to serve as trustees



and retained the right to appoint successor trustees, if any. The union then got ten other employers to agree to be bound to the trust. These ten new employers, although operating in the same industry, had no other connection with the original two employers. Clearly, the employers and employees cannot be said to be represented equally. The ten new employers, if represented at all, would have to be represented by the union trustees.

The only response to this argument would be to state that because there are an equal number of employer and management trustees, the employers and employees are equally represented in the administration of the trust. If that had been the congressional intent it could have easily been so stated. Additionally, to state that equal numbers means equal representation is a *non sequitur*. Indeed, that is the situation with respect to Walsh. This analogy may seem remote, but is in fact very similar to the situation ruled violative of the act in *Bricklayers, Etc., U. 15, Fla. v. Stuart Plaster Co., Inc.* 512 F.2d 1017 (5th Cir. 1975).

On the basis of the holding of the SASMI case, if Walsh were struck by a local union it could come into court and obtain an injunction against the strike; provided the strike had as its purpose requiring contributions to the subject trusts. Basing its cause of action on the SASMI holding, it would contend that it had no voice in the selection of the trustees and therefore the unions could not compel its contributions; on the basis of that case an injunction would issue.

The SASMI court also pointed out that the failure of the mechanical contractor to have a voice in the selection of the trustees created a "very real possibility of union domination of SASMI by the International Association."

Most employer associations charge their members dues. By convincing trustees that they should be allowed to contribute, non-association members are able to get all the benefits of an association (AGC) monitoring and jointly administrating the trust, without having to pay dues (in most instances, based on the number of man-hours worked) as an association's members must.

The primary authority relied upon by the SASMI court was *Quad City Builders Assn. v. Tri-City Bricklayers Union No. 7*, 431 F.2d 999 (8th Cir. 1970). The court in that case also found that the equal representation requirements of the Act had been violated. The union and the Bricklayers Association entered into an agreement whereby the association, on behalf of its employers, agreed to make contributions to a mutually agreeable trust. The trust the union insisted upon was a trust between itself and the Mason Association. The building assiciation had no voice in the selection of trustees, but the number of management and labor trustees was equal. The Court of Appeals upheld the trial court's ruling that the trust failed to meet the equal representation requirements of the Act. It stated:

> The trust fund here involved is created by a written instrument and provides benefits for employees permitted by the statute. The issue in controversy is whether employers and employees are equally represented by trustees in the administration of the fund. The Act, as shown by the portions thereof hereinabove quoted, specifically requires equal representation in the administration of the trust fund on the part of employers and employees. In Arroyo v. United States, 359 U.S. 419, 426 79 S.Ct. 864, 868, 3 L.Ed.2d 915, the Court observes that Congress in enacting the legislation here pertinent was concerned "with the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control."



In Blassie v. Kroger Co., 345 F.2d 58, 72 (8th Cir. 1965) we held *"to permit the union in any degree to participate in the choice of employer representatives does violence to the statutory standard of equal representation."*

The court in Employing Plasterers' Ass'n v. Journeymen, etc., 279 F.2d 92, 97 (7th Cir. 1960) holds that "§ 302 is aimed at the prevention of possible abuse and not at providing a remedy for abuse actually perpetrated."

On the equal representation issue, Judge Stephenson found:

> Considering all the facts of this case, the Court is compelled to hold that this Trust Fund fails to meet the equal representation requirement of § 302 (c)(5)(B), 29 U.S.C.A. § 186(c)(5)(B). Under the present circumstances Union domination of the Trust Fund is a very real possibility. Inherent in such domination is the possibility of abuse which § 302 was enacted to prevent. The statutory standard of equal representation under § 302 is a requirement placed upon the parties by law, and to permit the Union 'in any degree' to participate in the choice of employer representatives violates this specific standard. Local No. 688, International Brotherhood of Teamsters v. Townsend, 345 F.2d 77, 79 (8th Cir. 1965); Blassie v. Kroger Co., 345 F.2d 58, 72 (8th Cir. 1965)." 302 F.Supp. 1031, 1035.
>
> Such finding is supported by substantial evidence.

431 F.2d at 1003 (Emphasis supplied).

Do the local unions in this case, "in any degree participate in the choice of employer (Walsh) representatives?" We submit the answer is "yes" with respect either to Walsh or to contributors who do not belong to or are not represented by an employer association which selects the trustees. When the union enters into a collective bargaining agreement with a non-association member requiring trust

contributions they are thereby imposing on the non-member contractor those trustees selected by the employer association and the unions. In essence, they are deciding for the non-member who that non-member's representative on the trust will be. They are not only participating in the non-member's choice, they are in fact dictating it. 29 U.S.C. § 186 "is aimed at the prevention of possible abuse and not at providing a remedy for abuse actually perpetrated."

This court should rule as a matter of law that employers and employees are not equally represented where an employer contributor is precluded from participating in the selection process of management trustees. Walsh because of his nonmembership in AGC could not and did not.

## V. NECESSITY OF A WRITTEN AGREEMENT

Proviso (B) to 29 U.S.C.A. § 186(c)(5) provides, in pertinent part, that payments to an employee trust fund are lawful only if, "the *detailed basis* on which such payments are to be made is specified in a *written agreement with the employer.*" (Emphasis added).

We note that where the statute speaks of the "detailed basis", it means exactly that. If the statutory standard of specificity is not met in a particular agreement, the acceptance of payments to a trust required thereby is unlawful. *Bey v. Muldoon,* 223 F.Supp. 489, 498 (E.D. Pa. 1963).

Furthermore, mere payment in accordance with the terms of an existing collective bargaining agreement or trust fund agreement to which the contributor is not a party does not satisfy the requirements of the statute. *Carpenter's Local No. 529 v. Bracey Dev. Co.,* 321 F.Supp. 869, 875 (D. Ark. 1971).



We have found no case which interprets or defines the words, "the detailed basis on which such payments are to be made is specified in a written agreement with the employer." At the very least Congress must have had in mind the trust agreements themselves. Neither the petitioner or the petitioner's non-union subcontractor (Jackson) is party to those trust agreements. The parties are the local AGC chapter and the local unions. The trust agreements were arrived at and continue to be modified and amended through the course of negotiation; negotiations to which neither Walsh, by virtue of his non-AGC status, nor Jackson, by virtue of his non-union status, is party or privy.

Does the fact that an employer or employer association is party to a written agreement mean that any other employer, having no connection with the employer or employer association party to the agreement, can contribute to the trust created by the agreement? We submit that the answer is "no" and that the clear meaning of the statute is that no employer can contribute unless he is *in fact* a party to the agreement. Absent such a conclusion there would be nothing preventing a carpentry contractor doing business in Florida from contributing to the subject trusts or an employer in a wholly unrelated business from doing the same thing, except perhaps if the union trustee refused to accept the contributions. That exception, as pointed out above, is exactly what the statute is designed to prevent, namely, union control and domination of the trusts.

The trust agreements create certain duties and responsibilities for each employer. Any employer contributor who is not an actual party thereto is not therefore bound thereby, even if he has entered some side agreement with the union whereby he agrees to contribute to the various trusts.

In the leading case of *Moglia v. Geoghagan*, 403 F.2d 110 (2d Cir. 1968), cert. den., 89 S.Ct. 1193 (1969), an employer had contributed to certain trust funds on his employees' behalf for some twenty-eight years. The employer had never, however, executed either the collective bargaining agreement or the trust agreement requiring the payments. The court held that the trust had accepted the employer's contributions unlawfully, saying:

> Under Section 302, *any* payment made by an employer to an employee representative, and this includes trustees administering a pension trust fund, See e.g., United States v. Ryan, 350 U.S. 299, 76 S.Ct. 400, 100 L.Ed. 335 (1956); Workers International Ass'n., 248 F.2d 307 (9 Cir. 1957), cert. denied, 355 U.S. 924, 78 S.Ct. 367, 2 L.Ed.2d 354 (1958), contra, United Marine Division, I.L.A., Local 333 v. Essex Transportation Co., 216 F.2d 410 (3 Cir. 1954), and the receipt of such payments by an employee representative are absolutely forbidden unless there is a written agreement between the employer and the union specifying the basis upon which the payments are made. Thus, *in the case of a legally established union pension trust fund, the only employer contributions which may be accepted by the trustees administering the fund are those contributions from employers who have a written agreement with the union as required by sub-section 302(c)(5)(B). Absent the written agreement, there is no valid Section 302 trust as to those employer contributions; the parties making and accepting such contributions are violating Section 302, and the intended beneficiary of the illegal employer contributions has no legal right under Section 302 to the benefits normally derived from employer contributions to the trust fund. Only employees and former employees of employers who are lawfully contributing to a union pension trust fund may qualify as beneficiaries of a Section 302 trust.* Rittenburg v. Lewis, 238 F.Supp. 506 (E.D. Tenn. 1965); Bolgar v. Lewis, 238 F.Supp. 595 (W.D. Pa. 1970).

403 F.2d at 116 (Emphasis supplied).



By virtue of a "sub-contracting" clause, petitioner has been required to make trust contributions on behalf of employees not in his employ. We submit that the statute requires that the employer of the employees on whose behalf the contributions are made must be a party to a written agreement and that neither petitioner nor petitioner's subcontractor was so bound. Contributions made by employers who merely agree to be bound by the terms of a given trust agreement are violative of the intent of the statute.

The undisputed legislative intent in passing the statute was to curb union domination and abuses vis-a-vis employee-benefit trusts. That intent is subverted by permitting contributions from employers who are not *party* to the written agreement which sets forth "the detailed basis on which such payments are to be made" even though that employer may agree to be bound to the agreement. For example, a union and an employer may make an agreement creating a "302 trust". The union then enters separate agreements with other contractors who agree to be bound to the terms of the "302 trust" agreement. In the event of union abuses arising from the structure of the trust those other employer contributors would be virtually powerless to correct same. Why? Because they are not parties to the agreement—they have no power to negotiate modifications or amendments. Instead, they must rely on the employer who actually entered the "written agreement" and that employer may be powerless or unwilling to do anything about the abuses. In short, the statute does not envision contributions made on behalf of employees or employers who are participants in the agreement but not actually parties to it. In *Bricklayers, supra,* both the employer and the union who created the trust were guilty of abuses. They are trying to

bind non-creators of the trust to make contributions relying on the fact that the collective bargaining agreement required contributions.

> The design of Section 302 discloses two basic congressional concerns. First, Congress intended to subject to close regulation the administration of union funds providing employee fringe benefits such as pensions and health and welfare payments. Congress wished to remove these funds from the absolute control of union officials by giving employers a co-ordinate responsibility for their administration. Second, Congress intended to prohibit special payments by employers and employer associations to employees, employee organizations, except on conditions carefully prescribed by law. One of these exceptions to that general prohibition permits employers to make payments to a trust fund established for the sole and exclusive benefit of the employees and families, for the purpose of paying for medical or hospital care, pensions, compensation for employment-related injuries and illnesses, unemployment benefits or life insurance, disability and sickness insurance, or accident insurance. The requirements that must be met in establishing a valid Taft-Hartley trust are prescribed in Sections 302(c)(5)(B) and 302 (c)(5)(C).
>
> Section 302(c) is a narrow exception to the general prohibition of employer-employee payments contained in Sections 302(a) and 302(b). Strict compliance with the terms of Section 302(c) is required to settle a qualifying Taft-Hartley trust. As Judge Waterman said in Moglia v. Geoghegan, 2 Cir. 1968, 403 F.2d 110, 115:
>
> "[a] reading of the legislative history of Section 302 shows that Congress intended to prohibit the establishment of any union funds by means of employer payments unless the funds conformed *in all respects* with the specific dictates of Section 302(c)".
>
> . . .
>
> Judicial adherence to the intention of Congress in enacting Section 302 requires strict enforcement of the purposefully rigid structure provided in this section.
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> 512 F.2d at 1024, 1026.



We would, therefore, urge this court to hold that unless the employer of the employees on whose behalf trust contributions are made is an actual party to the written agreement specifying the detailed basis on which such payments are to be made those contributions are unlawful. Merely agreeing to be bound to the written agreement is not sufficient to satisfy the statutory requirement.

## VI. CONCLUSION

Although the primary focus of the court below was the legality of a subcontracting clause, we submit there is a more fundamental and important issue underlying this controversy. That is the legality of contributions made by an employer to a "302 trust" situated as is Walsh.

We urge this court that not only do the trusts have no power to compel contributions from Walsh but any contribution, if made by Walsh, would be illegal. Walsh, if represented at all in the administration of these trusts, is represented by the union trustees and is definitely not a party to the written agreement specifying the detailed basis on which the payments are to be made.

Respectfully submitted,

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